IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.10291 OF 1998

R. Jawahar
Sole Proprietor
Messrs K.S. Rengasamy Gunny Depot,
66,NOrth Car Street, Dindigul,
Mannar Thirumalai District. .. Petitioner

-Vs-

The Tamilnadu Civil Supplies
Corporation,
Rep. by its Chairman and
Managing Director,
18, Thambusamy Street, Kilpauk,
Chennai 10. .. Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.R. Karuppan

For Respondent-1 : Mr.V. Perumal

:J U D G M E N T

The petitioner has filed the writ petition for directing the respondent Corporation to consider the representation dated 7.7.1998 and to communicate the order.

2. The dispute in the representation relates to waiver of storage charges in connection with lifting of stocks. As per the original order, the petitioner has been given 30 days time to lift the stock of gunny bags but as the stock could not be lifted within the time, some extension had been sought for. Permission was accorded to lift the stock on payment of some penalty. The parties entered into some correspondence on the matter. A writ petition had been filed by the petitioner at that stage which was subsequently withdrawn. The request of the petitioner for waiver of penalty was acceded to. However, subsequently the petitioner had prayed for waiver of storage charges. Thereafter the petitioner issued a notice through Advocate dated 7.7.199 8 and the prayer in the writ petition is to dispose of such

representation within a fixed time.

3. A counter affidavit and a supplemental counter affidavit have been filed refuting many of the contentions raised in the writ petition.
4. Among other things, it has been contended by the respondent that as per the tender condition, arbitration clause is there and the petitioner should have invoked the arbitration clause. It is also indicated that on self-same cause of action a writ petition had been filed earlier and the same has been withdrawn and therefore, the subsequent writ petition is not maintainable.
5. Paragraph 36 of the tender condition is to the following effect :-

 36. In case of any dispute, including the interpretation of any of the clauses in the agreement to be executed, the matter shall be referred to a person in the panel of Arbitrators, approved by the Board of Directors of Tamil Nadu Civil Supplies Corporation Limited. The remuneration for the Arbitrator shall be shared equally by the Tamil Nadu Civil Supplies Corporation Limited and the other party to the Arbitration. The decision of the Arbitrator shall be final and binding on both the parties to the Arbitration. The Arbitrator may, with the mutual consent of the parties, extend the time for making the award.

6. A perusal of the aforesaid provision amply makes it clear that the question now raised can be raised by invoking the arbitration clause. Even otherwise, the dispute raised in the present writ petition is essentially a dispute arising out of the contract regarding refund of some amount and alternative remedy of filing a suit is also available. Filing of writ petition for enforcing such a right on the basis of a contract does not appear to be appropriate.

7. For the aforesaid reasons, I am not inclined to issue any direction in the present case leaving it open to the petitioner to pursue the remedy available under law by either invoking the arbitration clause or filing a suit in accordance with law. The writ petition is accordingly disposed of. No costs.

Index : Yes
Internet : Yes
dpk

To

The Tamilnadu Civil Supplies Corporation,
Rep. by its Chairman and Managing Director,
18, Thambusamy Street, Kilpauk, Chennai 10.